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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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60683	7590	12/04/2006	EXAMINER	
HEALTH HERO NETWORK, INC. 2000 SEAPORT BLVD. SUITE 400 REDWOOD CITY, CA 94063			NASSER, ROBERT L	
			ART UNIT	PAPER NUMBER
			3735	

DATE MAILED: 12/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/605,547

Applicant(s)

BROWN, STEPHEN J.

Examiner

Robert L. Nasser

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-82 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-82 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 9/12/2006
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

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The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-23 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-12 of U.S. Patent No. 5307263 in view of Dunning 4296796 and Karz 4173971. Although the conflicting claims are not identical, they are not patentably distinct from each other because the current claims are much broader than the patented claims and, as such, are anticipated by the claims. In addition, Dunning teaches that airflow is a known parameter to be monitored in a system of the type of the previously claimed invention. Hence, it would have been obvious to modify the prior invention to measure airflow, to provide as much data as possible to medical personnel, to enable an accurate diagnosis. In addition, Karz shows a system in figure 1 and described in column 5, lines 15-25, where the physician

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sends messages through the server to the user to make suggestions to improve the patient's health, for example. As such, it would have been obvious to modify the above prior invention to have the physician communicate through the server to the patient, to increase the quality of the patient's care.

Claims 24-82 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-12 of U.S. Patent No. 5307263 in view of Dunning 4296796 and Fujimoto. Although the conflicting claims are not identical, they are not patentably distinct from each other because the current claims are much broader than the patented claims and, as such, are anticipated by the claims. In addition, Dunning teaches that airflow is a known parameter to be monitored in a system of the type of the previously claimed invention. Hence, it would have been obvious to modify the prior invention to measure airflow, to provide as much data as possible to medical personnel, to enable an accurate diagnosis. In addition, Fujimoto teaches in column 8, lines 62-66, that it is known to send the program from the central location. Such an arrangement allows easy updating of the multiple locations, instead of requiring a person to travel to each location to upgrade each site. As such, it would have been obvious to modify the prior invention to use the software updating technique of Fujimoto, to simplify the improvements to the system.

Claims 1-23 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-51 of U.S. Patent No. 5899855 in view of Dunning 4296796 and Karz. Although the conflicting claims are not identical, they are not patentably distinct from each other because the current claims are much broader

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than the patented claims and, as such, are anticipated by the claims. In addition, Dunning teaches that airflow is a known parameter to be monitored in a system of the type of the previously claimed invention. Hence, it would have been obvious to modify the prior invention to measure airflow, to provide as much data as possible to medical personnel, to enable an accurate diagnosis. In addition, Karz shows a system in figure 1 and described in column 5, lines 15-25, where the physician sends messages through the server to the user to make suggestions to improve the patient's health, for example. As such, it would have been obvious to modify the above prior invention to have the physician communicate through the server to the patient, to increase the quality of the patient's care.

Claims 24-82 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-51 of U.S. Patent No. 5899855 in view of Dunning 4296796 and Fujimoto. Although the conflicting claims are not identical, they are not patentably distinct from each other because the current claims are much broader than the patented claims and, as such, are anticipated by the claims. In addition, Dunning teaches that airflow is a known parameter to be monitored in a system of the type of the previously claimed invention. Hence, it would have been obvious to modify the prior invention to measure airflow, to provide as much data as possible to medical personnel, to enable an accurate diagnosis. In addition, Fujimoto teaches in column 8, lines 62-66, that it is known to send the program from the central location. Such an arrangement allows easy updating of the multiple locations, instead of requiring a person to travel to each location to upgrade each site. As such, it would

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have been obvious to modify the prior invention to use the software updating technique of Fujimoto, to simplify the improvements to the system.

Claims 1-23 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 34-138 of U.S. Application 09/237194 in view of Dunning 4296796 and Karz. Although the conflicting claims are not identical, they are not patentably distinct from each other because the current claims are much broader than the patented claims and, as such, are anticipated by the claims. In addition, Dunning teaches that airflow is a known parameter to be monitored in a system of the type of the previously claimed invention. Hence, it would have been obvious to modify the prior invention to measure airflow, to provide as much data as possible to medical personnel, to enable an accurate diagnosis. In addition, Karz shows a system in figure 1 and described in column 5, lines 15-25, where the physician sends messages through the server to the user to make suggestions to improve the patient's health, for example. As such, it would have been obvious to modify the above prior invention to have the physician communicate through the server to the patient, to increase the quality of the patient's care.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 24-82 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 34-138 of U.S. Application 09/237194 in view of Dunning 4296796 and Fujimoto. Although the conflicting claims are not identical, they are not patentably distinct from each other



because the current claims are much broader than the patented claims and, as such, are anticipated by the claims. In addition, Dunning teaches that airflow is a known parameter to be monitored in a system of the type of the previously claimed invention. Hence, it would have been obvious to modify the prior invention to measure airflow, to provide as much data as possible to medical personnel, to enable an accurate diagnosis. In addition, Fujimoto teaches in column 8, lines 62-66, that it is known to send the program from the central location. Such an arrangement allows easy updating of the multiple locations, instead of requiring a person to travel to each location to upgrade each site. As such, it would have been obvious to modify the prior invention to use the software updating technique of Fujimoto, to simplify the improvements to the system.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-82 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-58 of copending Application No. 10/981872 in view of Dunning et al. Although the conflicting claims are not identical, they are not patentably distinct from each other because the current claims are broader versions of the patented claims, and, as such, are covered by the patented claims. In addition, Dunning teaches that airflow is a known parameter to be monitored in a system of the type of the previously claimed invention.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-23 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-89 of copending Application No. 11/004135 in view of Dunning et al and Karz. Although the conflicting claims are not identical, they are not patentably distinct from each other because the current claims are broader versions of the patented claims, and, as such, are covered by the patented claims. In addition, Dunning teaches that airflow is a known parameter to be monitored in a system of the type of the previously claimed invention. In addition, Karz shows a system in figure 1 and described in column 5, lines 15-25, where the physician sends messages through the server to the user to make suggestions to improve the patient's health, for example. As such, it would have been obvious to modify the above prior invention to have the physician communicate through the server to the patient, to increase the quality of the patient's care.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 24-82 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-89 of copending Application No. 11/004135 in view of Dunning et al and Fujimoto. Although the conflicting claims are not identical, they are not patentably distinct from each other because the current claims are broader versions of the patented claims, and, as such, are covered by the patented claims. In addition, Dunning teaches that airflow is a known parameter to be monitored in a system of the type of the previously claimed invention. In addition, Fujimoto teaches in column 8, lines 62-66, that it is known to



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send the program from the central location. Such an arrangement allows easy updating of the multiple locations, instead of requiring a person to travel to each location to upgrade each site. As such, it would have been obvious to modify the prior invention to use the software updating technique of Fujimoto, to simplify the improvements to the system.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-23 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-64 of copending Application No. 11/004134 in view of Dunning et al and Karz. Although the conflicting claims are not identical, they are not patentably distinct from each other because the current claims are broader versions of the patented claims, and, as such, are covered by the patented claims. In addition, Dunning teaches that airflow is a known parameter to be monitored in a system of the type of the previously claimed invention. In addition, Karz shows a system in figure 1 and described in column 5, lines 15-25, where the physician sends messages through the server to the user to make suggestions to improve the patient's health, for example. As such, it would have been obvious to modify the above prior invention to have the physician communicate through the server to the patient, to increase the quality of the patient's care.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 24-82 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-6489 of copending Application No. 11/004134 in view of Dunning et al and Fujimoto. Although the conflicting claims are not identical, they are not patentably distinct from each other because the current claims are broader versions of the patented claims, and, as such, are covered by the patented claims. In addition, Dunning teaches that airflow is a known parameter to be monitored in a system of the type of the previously claimed invention. In addition, Fujimoto teaches in column 8, lines 62-66, that it is known to send the program from the central location. Such an arrangement allows easy updating of the multiple locations, instead of requiring a person to travel to each location to upgrade each site. As such, it would have been obvious to modify the prior invention to use the software updating technique of Fujimoto, to simplify the improvements to the system.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10, and 13-16, 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bornn et al 5348008 in view of Fujimoto 5339821 and Karz et al.

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Bornn et al shows a system for health monitoring including a central server 4000 in figure 2a, which receives data and communicates data, a microprocessor 1006 based system and memory 1008, which provides a digital signal through a/d converter 1036 which are signals "indicative of air flow." The respiration sensors or Bornn are chest expansion transducers 26. These transducers provide a signal indicative of the expansion of the chest and the signal varies with inspiration and expiration. As such, the signal is "representative of airflow." The microprocessor-based system also sends data to the central server over link 1002. In addition, the central server is in communication with a health care professional computer at location 5000 which receives patient data (see column 8, line 19) including respiratory data. The examiner notes that the microprocessor based system is a home based unit and has an audio system for indicating information such as alerts to the patient, but does not have a display. Fujimoto shows a similar system for use by a patient at home while being monitored remotely that includes a display at the patient site to allow the patient to receive instructions on how to use the system, allow communication between the patient and a medical professional, and also to display the data to the patient. Such a system ensures proper use of the device and improves communication between the patient and medical personnel. Therefore, it would have been obvious to modify Bornn et al to include a display in communication with the microprocessor, to improve the accuracy of results and simplify a communication. The combination does not send messages from the physician computer through the server to the patient. However, Karz shows a system in figure 1 and described in column 5, lines 15-25, where the

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physician sends messages through the server to the user to make suggestions to improve the patient's health, for example. As such, it would have been obvious to modify the above combination to have the physician communicate through the server to the patient, to increase the quality of the patient's care. Claim 2 is rejected in that the signal from the chest expansion transducer changes when a breath of air is expelled. Claims 3 and 4 are rejected in that the system of Bornn is used in self care monitoring. Claim 5 is rejected in that the system further includes a data management unit, multiplexer 1022, and a plurality of sensors that are directly received by the data management unit. Claim 6 is rejected in that the system monitors a patient's condition and facilitates communicating data to the server 4000. Claim 7 is rejected in that the monitoring device includes a pulse sensor. Claim 8 is rejected in that the microprocessor and memory are attached to the vest of Bornn, which is capable of being held in a hand. Claims 9 and 10 are rejected in that the combined processor and display of the combination are "capable" of displaying pictorial or animated data, depending on programming. While there is not necessarily a teaching of doing so, the display is certainly capable of doing so. Claim 13 is rejected in that Fujimoto further teaches including a personal computer at the home site, to enable more efficient communication. Hence, it would have been obvious to modify the above combination to include a computer, to enable improved communication. Claim 14 is rejected in that Fujimoto further teaches printing a result of the diagnosis to provide information to the patient as to his or her condition. As such, the system processes a report. It would have been obvious to modify the system of Bornn to provide a report to the patient as to

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his or her condition, to fully educate the patient as to the nature of the condition and to allow proper care to be pursued. Claim 15 is rejected in that the exact nature of the report would have been a mere matter of design choice for one skilled in the art. Claim 16 is rejected in that inherently, the data in the report is for a "period of time." Claim 19 is rejected in that the information on the display includes instructions for use, presumably step by step instructions. Claim 20 is rejected in that instructions are "educational." Claim 21 is rejected in that while the combination does not specifically state that the display is menu driven, the examiner takes official notice that menu driven displays were well known at the time of applicant's invention. Claim 22 is rejected in that memory 1008 stores an operating program.

Claims 1-10, and 13-16, 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bornn et al 5348008 in view of Pennock 49601187 and Fujimoto 5339821 and Karz. Bornn et al shows a system for health monitoring including a central server 4000 in figure 2a, which receives data and communicates data, a microprocessor 1006 based system and memory 1008, which provides a digital signal through a/d converter 1036 which are signals respiratory signals. Pennock shows a system where a chest expansion sensor is used to measure flow rate. As such, it would have been obvious to modify Bornn et al to further measure flow rate, to provide the medical personnel with a more complete picture of the patient's condition. The microprocessor-based system also sends data to the central server over link 1002. In addition, the central server is in communication with a health care professional computer at location 5000 which receives patient data (see column 8, line 19) including respiratory data. The

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examiner notes that the microprocessor based system is a home based unit and has an audio system for indicating information such as alerts to the patient, but does not have a display. Fujimoto shows a similar system for use by a patient at home while being monitored remotely that includes a display at the patient site to allow the patient to receive instructions on how to use the system, allow communication between the patient and a medical professional, and also to display the data to the patient. Such a system ensures proper use of the device and improves communication between the patient and medical personnel. Therefore, it would have been obvious to modify Bornn et al to include a display in communication with the microprocessor, to improve the accuracy of results and simplify a communication. However, Karz shows a system in figure 1 and described in column 5, lines 15-25, where the physician sends messages through the server to the user to make suggestions to improve the patient's health, for example. Claim 2 is rejected in that the signal from the chest expansion transducer changes when a breath of air is expelled. Claims 3 and 4 are rejected in that the system of Bornn is used in self care monitoring. Claim 5 is rejected in that the system further includes a data management unit, multiplexer 1022, and a plurality of sensors that are directly received by the data management unit. Claim 6 is rejected in that the system monitors a patient's condition and facilitates communicating data to the server 4000. Claim 7 is rejected in that the monitoring device includes a pulse sensor. Claim 8 is rejected in that the microprocessor and memory are attached to the vest of Bornn, which is capable of being held in a hand. Claims 9 and 10 are rejected in that the combined processor and display of the combination are "capable" of displaying pictorial



or animated data, depending on programming. While there is not necessarily a teaching of doing so, the display is certainly capable of doing so. Claim 13 is rejected in that Fujimoto further teaches including a personal computer at the home site, to enable more efficient communication. Hence, it would have been obvious to modify the above combination to include a computer, to enable improved communication. Claim 14 is rejected in that Fujimoto further teaches printing a result of the diagnosis to provide information to the patient as to his or her condition. As such, the system processes a report. It would have been obvious to modify the system of Bornn to provide a report to the patient as to his or her condition, to fully educate the patient as to the nature of the condition and to allow proper care to be pursued. Claim 15 is rejected in that the exact nature of the report would have been a mere matter of design choice for one skilled in the art. Claim 16 is rejected in that inherently, the data in the report is for a "period of time." Claim 19 is rejected in that the information on the display includes instructions for use, presumably step by step instructions. Claim 20 is rejected in that instructions are "educational." Claim 21 is rejected in that while the combination does not specifically state that the display is menu driven, the examiner takes official notice that menu driven displays were well known at the time of applicant's invention. Claim 22 is rejected in that memory 1008 stores an operating program.

Claims 11, 12, 17, 18, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bornn et al in view of Fujimoto and Karz, as applied to claims 1-10, 14-16 and 19-22 above, and further in view of Rosenthal et al 5077476. With respect to claims 11, 12, and 23, Rosenthal teaches that it is known in medical devices to provide

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a removable memory cartridge, to allow the programming of the system to be updated simply by swapping out the memory. As such, it would have been obvious to modify the combination to include a removable memory, to allow the system to be upgraded more easily. Claim 17 is rejected in that the information on the display includes a message, including instructions and alerts as well as messages from medical personnel to the user of the device, i.e. a specific person.

Claims 11, 12, 17, 18, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bornn et al in view of Pennock, Fujimoto, and Karz as applied to claims 1-10, 14-16 and 19-22 above, and further in view of Rosenthal et al. With respect to claims 11, 12, and 23, Rosenthal teaches that it is known in medical devices to provide a removable memory cartridge, to allow the programming of the system to be updated simply by swapping out the memory. As such, it would have been obvious to modify the combination to include a removable memory, to allow the system to be upgraded more easily. Claim 17 is rejected in that the information on the display includes a message, including instructions and alerts as well as messages from medical personnel to the user of the device, i.e. a specific person.

Claims 24-33 and 35-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fujimoto in view of Dunning et al 4296756. Fujimoto shows a method including monitoring patient parameters at a patient location using a system including a patient location having a microprocessor based system including a display 14, a microprocessor 25, and a memory 33, presenting information on the display to the user (see abstract for example). Fujimoto further provides the data to a health care

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provider. In addition, Fujimoto sends a program for execution by the processor at the patient site from the central server to the patient site (see Fujimoto, column 8, lines 62-66). Fujimoto further teaches a variety of parameters to monitor, but does not monitor air flow. However, Dunning et al teaches that air flow is another parameter known to be monitored remotely in a system like that of Fujimoto. Hence, it would have been obvious to modify Fujimoto to measure airflow, as it is merely the substitution of one known parameter for another. The combination does not digitize the data prior to sending. Dunning et al further teaches that at the time of applicant's invention, it was well known to digitize data prior to transmission, to eliminate interference from measurements. Hence, it would have been obvious to modify the above combination to use digital data, to increase the accuracy of the measurements. Claim 25 is rejected in that the airflow occurs upon exhalation. Claims 26 and 27 are rejected in that the combination monitors patient's with chronic respiratory measurements. Claim 28 is rejected in that Fujimoto includes a data management unit 2 and a monitoring device 1 connected thereto. Claims 29 and 30 are rejected in that Fujimoto monitors and transmits blood pressure data. Claim 31 is rejected in that the terminal of Fujimoto may be hand held. Applicant should recite the structure that allows the device to be handheld. Claims 32, 33, and 36-38 are rejected in that, as discussed above, it is well known to include graphs, picture and animated information on medical report. Claim 35 is rejected in that the terminal 1 is a personal computer. Claim 39-42 are rejected in that the display of Fujimoto displays instructions to the user. Claim 43 is rejected that it

is well known to use a menu driven system for such information. Claim 44 is rejected in that memory 33 stores a program.

Claims 34 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fujimoto in view of Dunning et al, as applied to claims 25-33 and 35-43 above, and further in view of Rosenthal et al 5077476. Rosenthal teaches that it is known in medical devices to provide a removable memory cartridge, to allow the programming of the system to be updated simply by swapping out the memory. As such, it would have been obvious to modify the combination to include a removable memory, to allow the system to be upgraded more easily.

Claims 46-55, and 58-65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dunning et al in view of Fujimoto. Claim 46 is rejected in that Dunning shows a system including a microprocessor 32, a display 30, and a memory 34, the memory storing operating code for the processor, see column 7, line 1-5, which code causes the processor to display info on display 30, process airflow data, and transmit the data to the central computer. It does not send a program for execution at the patient site from the central station. However, Fujimoto teaches in column 8, lines 62-66, that it is known to send the program from the central location. Such an arrangement allows easy updating of the multiple locations, instead of requiring a person to travel to each location to upgrade each site. As such, it would have been obvious to modify Dunning to use the software updating technique of Fujimoto, to simplify the improvements to the system. Claim 47 is rejected in that the air flow data is exhalation data. Claims 48 and 49 are rejected in that the system is used for monitoring

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patient's with chronic respiratory disease. Claims 50 and 51 are rejected in that there is a sensor attached to a data management unit 38. With respect to claim 52, Fujimoto teaches monitoring multiple parameters, including the enumerated ones. Therefore, it would have been obvious to modify Dunning to measure at least one of the listed parameters, to get a better idea of the patient's overall health. Claim 53 is rejected in that part of the system can be hand held. Claims 54 and 55 are rejected in that the device is capable of displaying animation or pictorial information. . Claims 58-60 are rejected in that as discussed above. Fujimoto teaches displaying a report to the patient to inform the patient of the condition. As such, it would have been obvious to modify Dunning to display the report, as it is merely the substitution of one known display technique for another. Claims 61-63 are rejected in that the display 30 of Dunning et al shows instructions on how to use the device, which is educational. Claim 64 is rejected in that the examiner takes official notice that it would have been obvious to use a menu driven display, as such displays were well known at the time of applicant's invention. Claim 65 is rejected in that the processor receives and executes a program.

Claims 56, 57, and 66-82 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dunning et al in view of Fujimoto and Rosenthal et al 5077476. The Dunning/Fujimoto combination teaches all of the elements of these claims, as discussed above, further noting that the ROM 36 can be comprised on multiple ROM chips (see column 7, lines 4-5). In addition, Rosenthal teaches that it is known in medical devices to provide a removable memory cartridge, to allow the programming of the system to be updated simply by swapping out the memory. As such, it would have

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been obvious to modify the combination to include have all ROM chips be removable memory chips, to allow the system to be upgraded more easily. With respect to claim 71, Fujimoto teaches monitoring multiple parameters, including the enumerated ones. Claim 72 is rejected in that part of the system can be hand held. Therefore, it would have been obvious to modify Dunning to measure at least one of the listed parameters, to get a better idea of the patient's overall health. Claims 75-77 are rejected in that as discussed above. Fujimoto teaches displaying a report to the patient to inform the patient of the condition. As such, it would have been obvious to modify Dunning to display the report, as it is merely the substitution of one known display technique for another. Claims 81 is rejected in that the examiner takes official notice that it would have been obvious to use a menu driven display, as such displays were well known at the time of applicant's invention. The remaining claims are rejected for the reasons given above.

Applicant's arguments filed 9/14/2006 have been fully considered but they are not persuasive.

Applicant's arguments with respect to claims 1-23 and 46-82 have been deemed moot in view of the new grounds of rejection.

With respect to claim 24, applicant has asserted that Fujimoto and Dunning do not teach communication from a remote health professional computer through the server to the patient. The examiner notes that this argument is not relevant to claim 24, as this limitation is not present in claim 24.



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Applicant has further asserted Fujimoto or Fujimoto in view of Dunning do not receive instructions from the central server for execution on the processor. Applicant's attention is directed to column 8, lines 62-66 of Fujimoto, where it clearly teaches this feature.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert L. Nasser whose telephone number is 571 272-4731. The examiner can normally be reached on m-f 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on 571 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Robert L. Nasser  
Primary Examiner  
Art Unit 3735

RLN  
November 20, 2006

  
ROBERT L. NASSER  
PRIMARY EXAMINER